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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/873,259
Filing Date: June 05, 2001
Appellant(s): TANAKA ET AL.

———————————
Chun-Pok Leung
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 16, 2011 appealing from the Office

action mailed July 6, 2010.

(1) Real Party In Interest

The Real Party in Interest in this Appeal is Hitachi, Ltd., as evidenced by the Assignment recorded on July 14, 2010 at Reel 024683 and Frame 0772.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

1, 3-10 and 14-20.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

Claims 1,3-10, and 14-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Huberman, U.S. Pat. No. 5,826,244 in view of Kinney et al., U.S. Pat. No. 7,249,085, Shoham et al., U.S. Pat. No. 6,285,989, Odom et al., U.S. Pat. No. 6,058,379, and Koopersmith, U.S. Pub. No. 2001/0042002.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in

the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,826,244	Huberman, Bernardo A.	10-1998
2001/0042002	Koopersmith, Jeff	11-2001
6,285,989	Shoham, Yoav	09-2001
6,058,379	Odom et al.	05-2000
7,249,085	Kinney et al.	07-2007

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   **Claims 1, 3, 4 & 17 are rejected** under 35 U.S.C. 103(a) as being unpatentable

over Huberman (US Patent 5,826,244) in view of Kinney et al. (US Patent 7,249,085

B1, hereafter Kinney), Shoham et al. (US Patent 6, 285,989, hereafter Shoham), Odom

et al. (US Patent 6,058,379, hereafter Odom) and Koopersmith (US Pregrant

Publication 2001/0042002 A1).

Re. Claim 1, Huberman discloses a method for an auction brokerage service provided

by a computer server that resides between an information terminal of a user and auction

servers to perform brokerage operation for an auction. Huberman also discloses a computer automated third party broker service for administering an auction process between sellers and prospective customers (Abstract, ll. 1-2). Huberman further discloses multiple auctions (Col. 7, ll. 12-15; Col. 18, ll. 38-41) and communicating with the customer's user information terminal to notify of the auction result information (Col. 3, l. 59 – Col. 4, l. 18).

Huberman does not explicitly disclose a method for:

- Selecting information of said auction servers suitable for the user's conditions from among stored information related to said auction servers, in response to a request from said information terminal;

- Auctioning of an item

- Transmitting an auction registration request in the name of the user to each of the auction servers at the auction sites, that have been selected by the user from among the selected auction servers at the selected auction sites to receive a notification that the an auctioned commodity of the user has been registered at the selected auction servers, the selected auction servers auctioning the auctioned commodity simultaneously at the selected auction sites to the plurality of buyers accessing the selected auction sites;

- Notifying said information terminal of the auction result information and outputting the auction result, wherein said auction servers are other brokerage computers which accept bids from a plurality of information terminals for the auctioned commodity.

However, Kinney discloses "enabling each individual bidder to view a comparison of submitted bids in their own context" (Abstract, ll. 7-9), i.e. each bidder sees the other bids in real time.

Kinney also discloses auctioning of an item (Col. 7, ll. 51-53, 64-67). Further, the ordinary practitioner would have seen the auctioning of an item as obvious since the auctioning of items has been widely publicized in school textbooks (e.g. the Hope Diamond's auction price) and Christie's auctioning of various items of art, diamonds,

jewelry and other items had been widely publicized in the mass media for generations prior to applicant's invention.

Shoham discloses "multiple auctions simultaneously" (Col. 12, ll. 28-29), and the notification of the participant of the progress of a bid (Col. 14, ll. 11-16; Col. 14, l. 65 – Col. 15, l. 8; Col. 15, ll. 14-20).

Odom discloses multiple concurrent auctions (Col. 10, l. 10; Col. 10, l. 37 – Col. 11, l. 9). A preferred embodiment disclosed is in the trading of SEC listed stocks (i.e. registered equities). This auction activity is taking place during normal business hours simultaneously with auctioning of the same securities on one or more exchanges.

Koopersmith discloses a search server searching a data base of web site addresses for web sites fitting a certain word definition. Such a search is likely to bring up a number of qualified web sites, which are essentially contained in a server. Koopersmith's example illustrates a search for suppliers of toasters (page 1, [0004]-ll. 8-16). It would have been obvious to the practitioner that a similar automated search would have located servers which offer commodity auction servers which meet the seller's commodity criteria. Selecting information of said auction servers suitable for the user's conditions from among stored information related to said auction servers, in response to a request from said information terminal is implicit in Kinney, Shoham and Odom.

Transmitting an auction registration request in the name of the user to each of the auction servers that have been selected by the user from among the selected auction servers to receive a notification that an auctioned commodity of the user has been registered at the auction servers is also implicit in Huberman, Kinney, Shoham and Odom because the users implicitly are making these selections through their participation and approval. Registration of a user is implicit in each auction reference such as in Huberman and Shoham. It is obvious that registration information is transmitted by the intermediary on behalf of the user to each auction related entity as needed since this is part of the intermediary's service to benefit the user. It is also obvious that the intermediary is acting in the name of the user.

Based on the above disclosures the ordinary practitioner of the art at the time of Applicant's invention would have found it obvious that servers would be at the auction

sites selected by the user, that commodities being auctioned would be registered at the
selected auction servers, and, from Shoham above, that selected items could be
auctioned simultaneous at the selected auction servers.

Hence, the disclosures by Huberman Kinney, Shoham, Odom and Koopersmith,
combined with the well known practices cited above, would have made it obvious to the
ordinary practitioner to

- selecting information of said auction servers suitable for the user's conditions
  from among stored information related to said auction servers, in response to a
  request from said information terminal;
- transmitting an auction registration request in the name of the user to each of the
  selected auction servers to receive a notification that the commodity item of the
  user has been registered at the selected auction servers, the selected auction
  servers auctioning the commodity item simultaneously to the plurality of buyers
  accessing the selected auction servers sites; and
- notifying said information terminal of the auction result of the item
  and outputting the auction result,
- wherein said selected auction servers are other brokerage computers which
  accept bids from a plurality of information terminals for the
  commodity item.

Neither Huberman, Kinney, Shoham, Odom, or Koopersmith explicitly disclose a
method for auction brokerage service further comprising a step of "gathering trade
information of how the commodity item has been bid for at the selected auction servers
and tendering to the other selected auction servers the highest tendered price of the
bids in the name of a substitute in order to adjust the bid prices to the highest price over
all the selected auction sites servers". However, Applicant has chosen to define the
notification step in the specification as meaning the option of "Specifically, the auction
site monitoring section 242 may place …. Or it may alter the lower limit of the desired
price of such commodity into the highest tendered price in the name of the user"
(Specification, page 15, ll. 13-23). The option of changing an offer price such as the

minimum acceptable price in an auction was well known at the time of Applicant's invention. This well known and well established practice not only has a basis as an old practice prior to the consummation of a transaction, but it is also embedded in US law. An offer may be changed or withdrawn at any time before it is legally accepted. Therefore, it would have been obvious to an ordinary practitioner at the time of Applicant's invention to have combined the disclosures of Huberman with the disclosures of Kinney, Shoham, Odom, Koopersmith and well known practices for the purpose of gathering trade information of how the auctioned commodity has been bid for at the selected auction servers and notifying the other selected auction servers and notifying the other selected auction sites of the highest tendered price of the bids in order to adjust the bid prices to the highest price over all the auction sites. As a result, it would have been obvious to an ordinary practitioner at the time of Applicant's invention to have combined the disclosures of Huberman with the disclosures of Kinney, Shoham, Odom and Koopersmith and the practitioner's own knowledge for the purpose of providing computer automated third party multi auction brokerage services for the auctioning of a item for a client through a computer link, motivated by an opportunity to establish better prices for the sale of commodities through a more efficient auction process through electronically networked, highly automated, brokered auctions (Huberman, Col. 2, ll. 50-51, 55-56).

Re. Claim 3, neither Huberman, Kinney, Shoham, Odom, or Koopersmith explicitly disclose a step of requesting the selected auction servers to alter the desired price specified by the user according to the user's instruction when the computer has found that there is no bid for the commodity at any relevant auction sites by the date specified by the user. The practice of changing an offer price such as by reducing the offer price when there have been no offers at a given price was obvious to the ordinary practitioner because it was well known in the art of auctions and in the basic selling art in cases when an item was confirmed to have been legitimately exposed to prospective buyers ("where the commodity had been registered (in an auction) by the date specified by the user"). Therefore, it would have been obvious to an ordinary practitioner at the time of Applicant's invention to have combined the disclosures of Huberman with the

disclosures of Kinney, Shoham, Odom, Koopersmith and the practitioner's own knowledge for the purpose of operating a method for an auction brokerage service, motivated by an opportunity to establish better prices for the sale of commodities through a more efficient auction process through electronically networked, highly automated, brokered auctions (Huberman, Col. 2, ll. 50-51, 55-56).

Re. Claim 4, neither Huberman, Kinney, Shoham, Odom, or Koopersmith explicitly disclose a method for notifying the other auction sites of canceling the registration of the commodity by an auction site with which the trade has concluded. Removing an item from being offered for sale after a sale has been made wa a logical step to take, and would have been obvious t oteh ordinary practitioner because it was a well established practice in the art at the time of Applicant's invention. Therefore, it would have been obvious to an ordinary practitioner at the time of Applicant's invention to have combined the disclosures of Huberman with the disclosures of Kinney, Shoham, Odom, Koopersmith and the practitioner's own knowledge for the purpose of notifying the other auction sites of canceling the registration of the commodity by an auction site with which the trade has concluded, motivated by an opportunity to establish better prices for the sale of commodities through a more efficient auction process through electronically networked, highly automated, brokered auctions (Huberman, Col. 2, ll. 50-51, 55-56).

Re. Claim 17, Huberman does not explicitly disclose wherein said selected auction servers are other brokerage computers each of which accepts a request for processing for the auctioned item owned by the user from a corresponding information terminal of another user. However, Shoham discloses "multiple auctions simultaneously" (Col. 12, ll. 28-29), and Odom discloses wherein said selected auction servers are other brokerage computers each of which accepts a request for processing for the auctioned item owned by the user from a corresponding information terminal of another user. (Col. 10, l. 10; Col. 10, l. 37 – Col. 11, l. 9). Therefore, it would have been obvious to an ordinary practitioner at the time of Applicant's invention to have combined the disclosures of Huberman with the disclosures of Kinney, Shoham, Odom, Koopersmith and the practitioner's own knowledge to have developed a method for an auction brokerage service provided by a computer server that resides between an information

terminal of a user and auction servers, motivated by an opportunity to establish better prices for the sale of commodities through a more efficient auction process through electronically networked, highly automated, brokered auctions (Huberman, Col. 2, ll. 50-51, 55-56).

3.   **Claims 5-10, 14, 18-20 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Huberman in view of Kinney, Shoham, Odom and Koopersmith

 Re. Claims 5, 8 & 14, the rejection of claim 1 states what Huberman, Kinney, Shoham, Odom and Koopersmith disclose regarding auctioning services. Huberman does not explicitly disclose the detailed specifics of a method and a computer used in executing by a brokerage computer residing between a user computer of an auction user and auction computers of auction organizers to perform brokerage operations for auctions, the method and computer and systems means comprising the steps of:

(a) receiving information about the auctioned commodity and at least one specified auction organizer from the user computer;

(b) sending the information about the auctioned commodity in the name of the user to the auction computers of the specified auction organizers, the auction computers auctioninq the auctioned commodity simultaneously to the plurality of buyers accessinq the specified auction orqanizers;

(c) gathering trade information of how the auctioned commodity has been bid for at the specified auction organizers;

(d) tendering to the other auction computers of the specified auction organizers the highest bid price of the bid prices in the name of a substitute in order to adjust the bid prices to the highest price over all the auction computers of the specified auction organizers; and

(e) taking an action in accordance with conditions specified by the user computer if the brokerage computer has found that there is not bid for the commodity at any auction computers of the specified auction organizers by the date specified by the user including notifying said user computer of the auction result information and out putting the auction result, wherein said auction computers are other brokerage computers of

the specified auction organizers which accept bids from a plurality of other computers
for the auctioned commodity.

However, at the time of Applicant's invention, please refer to the rejection of claim 1 for
rejection background fundamentals regarding a method executed by a brokerage
computer residing between a user computer of an auction user and auction computers
of auction organizers to perform brokerage operations for auctions of a item. Further,

(1) Use of third party service providers or brokers performed through computer
automated methods and means was well known (Huberman, Col. 1, ll. 35-40).

(2) Offering of commodities on multiple parallel auction services was well known (See
the rejection of claim 1).

(3) The various tasks to be performed by a third party service provider for a customer
within the scope of the assignment, including communications tasks and other steps,
was implicit and obvious to the performance of a third party service.

(4)   It also was obvious that auction organizers and the web sites and web servers they
are using are interchangeable to a user in such auctions since the web sites and related
servers are merely inert apparatus which operate according to the programming
instructions of their organizers and the operators who may be working in their employ.
Thus, the auction sites represent their organizers and can be considered
interchangeable for purposes of the limitations in these claimed inventions..

In this case, an ordinary practitioner of the art at the time of Applicant's invention would
have found it obvious to combine the disclosures of Huberman with Kinney, Shoham,
Odom, Koopersmith and the practitioner's own knowledge for the purpose of providing
the service of an auction brokerage operation for a user customer, motivated by an
opportunity to establish better prices for the sale of commodities through a more
efficient auction process through electronically networked, highly automated, brokered
auctions (Huberman, Col. 2, ll. 50-51, 55-56).

Re. Claims 6 & 9, Huberman does not explicitly disclose the detailed specifics of a
method and means for execution comprising a step of requesting the auction organizers
to alter the desired price specified by the auction user according to the instruction of the
auction user if no bid has been found by the specified date. See the rejection of claim 5

regarding auction organizers. However, it would have been obvious to an ordinary practitioner at the time of Applicant's invention to have notify the computing environment at the side of said auction organizers of alternation of the desired price according to the instruction of the auction user if no buyer has been found for said auctioned commodity at all of said auction organizers by the date specified by the auction user for the reasons stated in the rejection of claim 3. Therefore, an ordinary practitioner of the art at the time of Applicant's invention would have found it obvious to combine the disclosures of Huberman with the disclosures of Huberman with Kinney, Shoham, Odom, Koopersmith and the practitioner's own knowledge for the purpose of requesting the auction sites to alter the desired price specified by the user according to the instruction of the auction user if no bid has been found by the specified date, motivated by an opportunity to establish better prices for the sale of commodities through a more efficient auction process through electronically networked, highly automated, brokered auctions (Huberman, Col. 2, ll. 50-51, 55-56).

Re. Claims 7 & 10, Huberman does not explicitly disclose the detailed specifics of a method comprising a step of notifying the other auction sites of canceling the registration of the item by an auction site with which the trade has concluded. However, it would have been obvious to an ordinary practitioner at the time of Applicant's invention to have notify the computing environment at the side of said auction organizers of cancellation of registration when any buyer has been found at any of said auction organizers and the auction is terminated for the reasons stated in the rejection of claim 4, motivated by an opportunity to establish better prices for the sale of commodities through a more efficient auction process through electronically networked, highly automated, brokered auctions (Huberman, Col. 2, ll. 50-51, 55-56).

Re. Claim 15, neither Huberman, Kinney, Shoham, Odom, or Koopersmith explicitly disclose a step wherein the brokerage server further comprises means for requesting the auction organizers to alter the desired price specified by the auction user according to the instruction of the auction user if no bid has been found by the specified date. The practice of changing an offer price such as by reducing the offer price when there have been no offers at a given price was obvious to the ordinary practitioner because it

was well known in the art of auctions and in the basic selling art in cases when an item
was confirmed to have been legitimately exposed to prospective buyers ("where the
commodity had been registered (in an auction) by the date specified by the user").
Therefore, it would have been obvious to an ordinary practitioner at the time of
Applicant's invention to have combined the disclosures of Huberman with the
disclosures of Kinney, Shoham, Odom, Koopersmith and the practitioner's own
knowledge for the purpose of operating a method for an auction brokerage service,
motivated by an opportunity to establish better prices for the sale of commodities
through a more efficient auction process through electronically networked, highly
automated, brokered auctions (Huberman, Col. 2, ll. 50-51, 55-56).

Re. Claim 16, neither Huberman, Kinney, Shoham, Odom, or Koopersmith explicitly
disclose wherein the brokerage server further comprises means for notifying the other
specified auction organizers of canceling the registration of the auctioned item owned
by the user by a specified auction organizer with which the trade has concluded.
Removing an item from being offered for sale after a sale has been made was a logical
step to take, and would have been obvious to the ordinary practitioner because it was a
well established practice in the art at the time of Applicant's invention. Therefore, it
would have been obvious to an ordinary practitioner at the time of Applicant's invention
to have combined the disclosures of Huberman with the disclosures of Kinney, Shoham,
Odom, Koopersmith and the practitioner's own knowledge for the purpose of notifying
the other auction sites of canceling the registration of the commodity by an auction site
with which the trade has concluded, motivated by an opportunity to establish better
prices for the sale of commodities through a more efficient auction process through
electronically networked, highly automated, brokered auctions (Huberman, Col. 2, ll. 50-
51, 55-56).

Re. Claims 18-20, none of Huberman, Kinney and Koopersmith explicitly disclose
wherein said selected auction servers are other brokerage computers each of which
accepts a request for processing for the auctioned item owned by the user from a
corresponding information terminal of another user. However, Shoham discloses
"multiple auctions simultaneously" (Col. 12, ll. 28-29), and Odom discloses wherein said

selected auction servers are other brokerage computers each of which accepts a
request for processing for the auctioned item owned by the user from a corresponding
information terminal of another user. (Col. 10, l. 10; Col. 10, l. 37 – Col. 11, l. 9).
Therefore, it would have been obvious to an ordinary practitioner at the time of
Applicant's invention to combined the disclosures of Huberman, Kinney, Koopersmith,
Shoham and Odom with his own knowledge to develop a method and a computer for an
auction brokerage service provided by a computer server that resides between an
information terminal of a user and auction servers, motivated by an opportunity to
establish better prices for the sale of commodities through a more efficient auction
process through electronically networked, highly automated, brokered auctions
(Huberman, Col. 2, ll. 50-51, 55-56).

> (10) **Response to Argument**

> **Re. Group 1: Claims 1, 3, and 4**

A.   **The References Do Not Teach or Suggest a Brokerage Computer Between
an Information Terminal or User Computer of the User and a Plurality of Auction
Servers for Performing the Functions As Recited in the Claims** (p. 8, ll. 17-19; p. 8,
l. 17 – p. 11, l. 4).
RESPONSE:
A computer server enabling a brokered auction is disclosed by Huberman (Fig's. 1-2;
Col. 3, ll. 53 - brokered auction; Col. 4, ll. 19-21; Col. 5, l. 34 - Col. 7, l. 31; Col. 5, ll. 59-
65; Col. 6, ll. 57-64 – a computer server is inherent, since the computer processor(s)
serve as a computer server.). The ordinary practitioner would have seen it as suggested
that Huberman thus discloses the claimed computer that resides between an
information terminal of a user and a plurality of buyers in the preamble of claim 1, and
also the plurality of auction servers in the claimed limitations such as in limitation (a)
"selecting" and following. Since the rejections are based on the obviousness statute,
each reference does not change the operation of the primary reference but merely
modifies the operation of the primary reference.

**B.   The References Do Not Teach or Suggest Simultaneous Auctions by
Multiple Auction Servers of an Auctioned Item Owned by the User (p. 11, ll. 5-6, p.
11, l. 5 – p. 14. l. 16).**
RESPONSE:

Odom discloses simultaneous auctions by multiple auction servers of an auctioned item
owned by the user in Col. 10, l. 8 - Col. 11, l. 9. In one embodiment Odom illustrates his
disclosure through the example of SEC registered securities (Col. 10, ll. 37-42). Further,
Odom also discloses a simulation of the trading floors of the real-world exchanges" (Col.
10, ll. 58-59). A plurality of servers are involved concurrently (i.e. simultaneously)
auctioning the same item and in parallel a large number of parallel auctions where the
same item (a listed stock) is being auctioned through multiple auctions which occur
through a large number of concurrent auctions (Trading is concurrent and interactive for
both buyer and seller – Col. 10, ll. 51-52). For example, for a highly traded stock such
as IBM, thousands of buyers and sellers are bidding to buy and sell the same shares
continuously during the entire trading day. Thousands of buyer and seller terminals and
many brokerage servers are in operation concurrently just trading one stock. The
referrals to the trading of registered securities and st6ock exchange trading suggested
and implicitly incorporated to the ordinary practitioner the standard operations of stock
exchanges, including the registration features with an intermediary, whether a broker re.
stock markets (Col. 2, ll. 23-26) or an intermediary facilitating entity, since such
commercial services would not be free per common sense. Since the rejections are
based on the obviousness statute, each reference does not change the operation of the
primary reference but merely modifies the operation of the primary reference.

**C.   The References Do Not Teach or Suggest Selection of Auction Servers
Suitable for the User's Conditions by the Brokerage Computer (p. 14, ll. 17-18; p.
14, l. 17 – p. 15, l. 3).**
RESPONSE:

Huberman discloses auction servers suitable for the user's conditions by the brokerage computer in Huberman (Fig's. 1-2; Col. 3, ll. 53 - brokered auction; Col. 4, ll. 19-21; Col. 5, l. 34 - Col. 7, l. 31; Col. 5, ll. 59-65; Col. 6, ll. 57-64) – see response to A above. Further, Odom discloses systems that involve the sale of stocks routed through a brokerage firm. The firm's computer is implied or suggested (Col. 2, ll. 24-26). Since the rejections are based on the obviousness statute, each reference does not change the operation of the primary reference but merely modifies the operation of the primary reference.

D.   The Examiner's Assertion that Gathering Trade Information and Tendering the Highest Tendered Price I the Name of a Substitute was Well Known As an Option of Changing an Offer Price is Flawed (p. 15, ll. 4-5; p. 15, l. 4 – p. 16, l. 12).
RESPONSE:

Odom discloses or suggests the equivalent of tendering since the disclosed interactive trading implicitly involves tenders of buy and sell offers of price associated with a quantity of a stock trading offer since buyers and sellers are continuously presenting offers for acceptance per Applicant's argument. Further, the process in Odom is continuously gathering and presenting trade information regarding the ongoing tenders on both sides of buy and sell "simulating the trading floor of real-world exchanges" (Col. 10, ll. 57-59). An ordinary practitioner of the art at the time of Applicant's invention would have been knowledgeable of the functioning of auctions, including the basic functioning of the stock exchange auction process since the general public even had a basic understanding of the stock exchange process and the presentation of ongoing buy and sell offers and continuous actual price information, made famous by the pre-computer networked price ticker tape readings of stock transaction prices. Thus, this reference simulating the trading floor of real-world exchanges would have suggested to the ordinary practitioner the basic manner of how such exchanges operated at that time. This included that the best counter offers are chosen to match an offer in a continuous automated process such as pioneered by the NASDQ and practiced by all major US exchanges at the time of Applicant's invention. Odom further discloses the ongoing

computer checking of current counter offer prices (Col. 10, 59-66; Col. 10, l. 59 – Col.

11, l. 9). Regarding the highest tender price, Odom discloses that a matching price is

searched for a seller or buyer for price and quantity (Col. 10, ll. 59-65). The ordinary

practitioner would have seen ti is as suggested or implicit that the best counter offer of

price with and quantity would be matched. Further, Huberman discloses that the best

offer is matched or accepted (Fig. 4a – NN – Select Best buy bid). It is also common

sense to do select the best offer for a buyer (lowest tendered) or seller (highest

tendered). Stock markets typically have a range of current bids which is called a spread

which changes continuously in price and the quantities associated with each price.

Since the rejections are based on the obviousness statute, each reference does not

change the operation of the primary reference but merely modifies the operation of the

primary reference.

   Group 2: Claim 17 (p. 16, l. 13 – p. 17, l. 17).

**"The teaching of auction processing in a single auction site not only fails to
implicitly disclose the selection of auction servers (i.e., auction sites) suitable for
the user's conditions, but teaches away from the selection of auction servers.".
(p. 17, ll. 1-4).**

RESPONSE:

The response to Argument D above discloses that Odom refers to the "simulating the

trading floor of real-world exchanges" (Col. 10, ll. 57-59). This would have suggested to

the ordinary practitioner that major stock exchange operations were in fact operating in

the manner of the instant claimed limitation of "wherein said selected auction servers

are other brokerage computers each of which accepts a request for processing for the

auctioned item owned by the user from a corresponding information terminal of another

user." (Claim 17). This is explained above in the response to D. Further, the large stock

exchanges at the time of Applicant's invention were using auction servers and a large

plurality of brokerage computers each accepting requests for processing an auctioned

item, such as specific quantities of common stock buy and sell orders with various

conditions, often at a specific price, or a limit order of "not less than" for a sell order or "not more than" for a buy order, or sometimes "at market". Limit orders were matched "at the limit or better", which meets the claimed limitations. Even though telephone orders were still accepted at the time of Applicant's invention, a large number of orders were entered through a user's computer making for interactions between a user's computer and a brokerage computer. Since the rejections are based on the obviousness statute, each reference does not change the operation of the primary reference but merely modifies the operation of the primary reference.

   Group 3: Claims 5-7 (p. 17, l. 18 – p. 19, l. 9).

   a) Huberman does not teach a computer as an auctioneer (p. 18, l. 17 – p. 18, l. 4).

   b) The gathering and tendering are neither taught in the cited art nor implicit in an way (p. 19, ll. 4-7).

RESPONSE:

   The arguments on p. 18, l. 10 - 17 are covered in the responses A-D above.

   a) Regarding a computer as an auctioneer, Odom discloses a computer as an auctioneer (Col. 2, ll. 23-26 – implicitly through the brokerage oriented stock market computer systems) and Col. 10, l. 10 – multiple concurrent auctions, and the entire process disclosed in Col. 10, l. 8 - Col. 11, l. 9.

   b) Gathering and tendering is disclosed, implied and suggested in Col. 10, ll. 37-66, as elaborated on above in the response D.

   Group 4: Claim 18 (p. 19, l. 10 – p. 20, l. 12).

 a) **Argument acknowledged same as per claim 17 above (p. 19, l. 17 – p. 20, l. 2).**

 b) **Teaching away argument re. trading through a broker because Odom discloses direct trading.**

RESPONSE:

 a) See Group 2 above.

 b) See Group 2 above.

Group 5: Claims 8-10 (p. 20, l. 13 - p. 21, l. 17)

 Similar argument as per claim 1 above re. lack of a computer residing between an information terminal of a user and auction servers by a plurality of buyers.

RESPONSE:

See the response to A above.

Group 6: Claim 19 (p. 21, l. 18 - p. 22, l. 19).

 Argument similar to that for claim 17 above.

RESPONSE:

See the response to Group 2, claim 17 above.

Group 7: Claims 14-16 (p. 23, l. 1 – p. 24, l. 10).

 The arguments of claims 1 and 8 are repeated and referred to as such (p. 23, ll. 2-18).

RESPONSE:

See the responses to claims 1 and 8 above.

Group 8: Claim 20 (p. 24, l. 11 – p. 25, l. 11).

 The arguments re. claims 14 and 17 are repeated.

RESPONSE:

See the responses above to the arguments re. claims 14 and 17.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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